

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN APRIL 13, 2010**

Liddell v. State, No. 2008-KA-00747-COA (April 13, 2010)

Crime: Sale of Cocaine

Sentence: 3 years to run consecutively to another conviction

Court: Tunica Circuit Court

Trial Judge: Hon. Kenneth Thomas

Appellant Attorney: Ole Miss Criminal Appeals Clinic

Appellee Attorney: John Henry

District Attorney: Laurence Mellen

Disposition: Affirmed. Barnes, J., for the Court, King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Ishee, Roberts and Maxwell, JJ., Concur.

ISSUES: (1) introduction of improper testimony from the C.I. about prior drug transactions with Liddell, (2) ineffective assistance of counsel, and (3) inadequate weight and sufficiency of the evidence.

FACTS: Brenda Liddell was convicted selling cocaine. In December 2006, MBN agents set up an undercover drug buy at Liddell's trailer with a C.I. The C.I. stated the area was a known drug area. He had been to "the Cove" numerous times in the past to purchase narcotics for himself. The C.I. was outfitted with audio and video equipment and given \$150 in state funds to purchase the narcotics. The C.I. drove to Liddell's trailer and the MBN agents established a surveillance position nearby. The C.I. entered the trailer and talked to Liddell, telling her he wanted to purchase \$150 worth of crack cocaine. He put the money on the kitchen counter and she told him to go outside. The C.I. explained that usually Liddell did not personally accept the money or hand over the narcotics, a "runner" did. A few moments later, Liddell and Catherine Bogan came to the trailer's door, and Bogan threw a little plastic container into the front yard for Liddell. The C.I. retrieved the container and asked Liddell if she had any pain pills or ecstasy for future buys. She stated that she did not deal with ecstasy, but she could get him as many Xanax pills as he wanted at two dollars per pill. The C.I. then drove to the post-buy location, where he turned over the container to the MBN agents. Bogan, who was incarcerated at the time of trial on another charge, testified for Liddell and denied that she or Liddell threw drugs to the C.I. on the day in question.

HELD: The trial judge did not err in allowing the State to ask the C.I. about other drug buys from Liddell. The C.I. testified concerning how Liddell usually operated. This was admissible under the "common plan" exception in MRE 404(b). The evidence was necessary to further link Liddell to the instant crime, not just to prove she had bad character. Although the judge did not perform a lengthy Rule 403 balancing test, he sufficiently ruled the probative value outweighed the prejudicial effect. There was no error with the limiting instruction given.

==>The Court failed to address a claim of ineffective assistance of counsel due to the state of the record. Liddell can raise the issue on PCR.

==>The evidence was sufficient and the verdict was not against the overwhelming weight of the evidence. “The State proved that the C.I. drove to Liddell's trailer, greeted her, asked to see the cocaine he had arranged to purchase, entered the trailer, counted out \$150, placed the money on the kitchen counter, and exited the trailer. The C.I. waited in his vehicle until a plastic container was thrown out of the trailer onto the yard. The C.I. retrieved it, spoke to Liddell and Bogan, who were at the trailer door, about other possible drug purchases, and then left.” The container contained 1.8 grams of crack cocaine.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62546.pdf>

Thomas v. State, No. 2007-KA-01197-COA (April 13, 2010)

Crime: Murder

Sentence: Life

Court: Hinds County Circuit Court

Trial Judge: Hon. Tomie T. Green

Appellant Attorney: Brenda Jackson Patterson

Appellee Attorney: Deirdre Mccrory

District Attorney: Eleanor Faye Peterson

Disposition: Affirmed. Griffis, J., for the Court, King, C.J., Lee and Myers, P.JJ., Irving, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

ISSUES: (1) Whether Thomas was denied due because the State failed to disclose that promises were made to a witness, and (2) that the witness falsely testified that no promises were made to him.

FACTS: Albert Lee Thomas, Jr., a/k/a “Boo,” Mary Henderson, and Tony Taylor were riding in a car that was driven by Thomas when Hampton flagged them down to ask for a ride. The group then drove to the Maple Street Projects where they all lived. Hampton smoked crack near the apartment complex's office, while Thomas went to his apartment. Within five minutes, the group left together to ride around. While driving around, Thomas and Hampton began to argue. Thomas believed that Hampton had stolen drugs from him. Thomas and Hampton exited the car and continued to argue in the street. Thomas claims that Hampton attempted to attack him with a screwdriver, so Thomas shot him in the leg in self-defense. On the way to the hospital, the car broke down. Henderson and Taylor eventually pushed the car down the hill, while Thomas and Hampton stayed at the top of the hill. Thomas claims that when he was assisting Hampton with his walking, because of the gunshot wound to his thigh, Hampton pulled the gun from Thomas's pocket; the two struggled over the gun; and Hampton was shot in the back of the head. Neither Henderson and Taylor saw the final altercation. At trial, Taylor testified he did not see Hampton pull a screwdriver before he was shot

the first time. Prior to Taylor's testimony, the prosecutor notified the trial court and defense that he was attempting to have Taylor released on bond after he testified.

HELD: Thomas claimed the State failed to disclose the full deal he would receive in exchange for his testimony. However, Thomas failed to sufficiently show a *Brady* violation, as he can not show a reasonable probability that had the evidence been disclosed, a different result would have occurred. Taylor testified that the prosecutor was going to try to get him out of jail; therefore, the jury already had reason to question Taylor's credibility and motivation for testifying.

==> Thomas also claimed that the State promised Taylor's mother that he would be released from jail, and some of his cases would be remanded to the file in exchange for her testimony against Thomas. The State failed to respond to this allegation. Thomas supported his claim with an affidavit from Taylor's counsel. However, during an evidentiary hearing, both the prosecutor and Taylor's mother denied promises were made. The judge found no additional promises or deals were offered. The trial court's findings were supported by the record.

==> The record fails to show a due process violation in that Taylor gave false testimony regarding the promises made to him. The State submitted that the only deal made with Taylor was that the prosecutor would try to have him released on bond. This was disclosed. Thomas pointed to the affidavit from Taylor's counsel. However, even if the testimony was false, Thomas failed to show that there was a reasonable probability that the outcome of the proceedings would have been different if the defense would have known about the alleged additional deals made with Taylor. Thomas failed to show this evidence was material.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO54720.pdf>

Whittington v. State, No. 2009-KA-00167-COA (April 13, 2010)

Crime: Murder

Sentence: Life

Court: Pike County Circuit Court

Trial Judge: Hon. Keith Starrett

Appellant Attorney: George T. Holmes

Appellee Attorney: Laura Hogan Tedder

District Attorney: Dee Bates

Disposition: Affirmed. Lee, P.J., for the Court, King, C.J., Myers, P.J., Irving, Griffis, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

ISSUES: (1) Whittington was prejudiced by hearsay statements; (2) he should have been allowed to use hearsay evidence to impeach the State's hearsay evidence; (3) prejudice resulted from certain character evidence; (4) a manslaughter instruction was required; (5) a self-defense instruction was

required; and (6) the verdict is not supported by the overwhelming weight of the evidence.

FACTS: Karey Whittington was convicted of the March 5, 1999, murder of Jerry Frith. Frith was shot once in the chest. The shooting occurred on a residential street in McComb, in an area referred to as Baertown. A witness, Leroy Carr, heard the shot and saw a red Chevrolet Camaro speeding away from where Frith's body was found. Carr stated that two white men were in the Camaro. Investigators had no leads in Frith's death until May 2003. Robert LeBlanc, a trusty at the Pike County Jail stated Tony Temple told him he was involved in Frith's death. Temple also told LeBlanc that Whittington was also involved. Temple was interviewed and admitted that he owned a red Camaro and that he and Whittington were involved in Frith's death. Temple stated that he and Whittington were looking for marijuana, so Temple pulled his car over next to two men. Discovering that these men did not have marijuana, Whittington told Temple to leave. As Temple was driving away, Whittington climbed halfway out the passenger door, pointed a shotgun toward the men, and shot at them. Temple stated that Dwayne Cash was present after the murder when Whittington bragged about shooting Frith. On cross-examination, Temple admitted that at some point that night, Whittington told Temple that Frith had a gun, but Temple testified that he never saw a gun. Cash testified that he was living with Whittington at the time of Frith's murder. Whittington told him that he leaned out of the window of the car and shot a man, while Temple drove the car away. While awaiting trial, Whittington also told a fellow inmate, "'I did it, they know I did it, but they'll never find the weapon.'" Although other witnesses also stated Whittington told them about the shooting, Whittington presented several inmates who testified he never spoke of the murder.

HELD: Testimony regarding whether Temple had offered any information regarding Frith's murder was not hearsay, but was offered to explain why officers took the actions they did in the investigation. The court explained this to the jury. The statements were not hearsay.

==>Additionally, testimony that Cash's statements were consistent with Temple's was also admitted to show the course of the State's investigation and were not hearsay.

==>Once again, testimony regarding what the trustee, LeBlanc, stated was also used to show why investigators were notified.

==>Finally, Whittington claimed that LeBlanc's testimony, regarding how he remembered who Temple had told him was with him on the night of Frith's death, was hearsay. LeBlanc originally gave a name other than Whittington. The trial judge did not abuse his discretion in allowing the testimony to the extent it showed LeBlanc's thought process in remembering Whittington's name.

==> Whittington next argued that the trial judge improperly excluded testimony from several of his witnesses. The witnesses were in jail with Whittington at some point prior to his trial. The trial judge, citing hearsay, refused to let the witnesses testify in detail as to any conversation they may have had with Whittington concerning the murder. However, all three witnesses were allowed to testify using "yes" or "no" answers that they had never heard Whittington admit killing Frith. This was not error, as a statement made by Whittington to any of these witnesses would be hearsay.

==>The trial judge did not abuse his discretion in limiting the extent of a witness's testimony that

claimed Whittington's ex-wife (who also testified) wanted Whittington to stay in jail. He allowed testimony that the two had spoken to impeach the ex-wife, but not the details of the conversation.

==> Next, Whittington argued that it was prejudicial for the jury to hear that prior to his arrest for murder, he was out on bond after being charged with child abuse. On cross-examination of his ex-wife, Whittington attempted to show that she was angry with him over their custody agreement and that she was trying to find a crime with which to charge him. On re-direct, she began to talk about going to the DA to talk about child abuse, but the court interrupted her. He later directed the jury to disregard. The judge did not abuse his discretion.

==> The trial judge did not err in refusing a manslaughter instruction. Whittington failed to produce any evidence to show that he was in a state of violent or uncontrolled rage or that he had been provoked to justify a heat of passion instruction.

==>The trial judge did not err in refusing a self-defense instruction. Other than the ex-wife's testimony that Whittington told her Frith had a gun, there was no evidence that Frith was holding a gun. There was no evidence that Frith threatened to use a gun against Whittington. There was no testimony introduced that Whittington thought he was in imminent danger.

==>The verdict was not against the overwhelming weight of the evidence. Although most of the witnesses for the prosecution and for the defense were criminals, it was for the jury to assess their credibility. Whittington told Cash that he shot Frith on purpose because he was tired of getting ripped off by drug dealers. Several witnesses, who were in jail with Whittington, heard him admit to Frith's murder.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62115.pdf>

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